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Trump Plaza Associates d/b/a Trump Plaza Hotel and Casino and International Union, United Automobile, Aerospace & Agricultural Implement Workers of America—AFL-CIO, Petitioner. Cases 4-RC-21263 and 4-CA-36217

September 29, 2010

## DECISION, CERTIFICATION OF REPRESENTATIVE, AND NOTICE TO SHOW CAUSE

By Chairman Liebman and Members Becker and Pearce

On August 29, 2008, the two sitting members of the Board issued a Decision and Order in this proceeding, which is reported at 352 NLRB No. 146 (2008). Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit, and the General Counsel filed a crossapplication for enforcement. On June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained. Thereafter, the court of appeals remanded this case for further proceedings consistent with the Supreme Court's decision.

The National Labor Relations Board has consolidated these proceedings and delegated its authority in both proceedings to a three-member panel.<sup>2</sup>

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. The Board's August 29, 2008 decision states that the Respondent is precluded from litigating any representation issues because, in relevant part, they were or could have been litigated in the prior representation proceed-

ing. The prior proceeding, however, was also a twomember decision, and we do not give it preclusive effect.

We have considered the post-election representation issues raised by the Respondent. The Board has reviewed the record in light of the exceptions and briefs, and has adopted the judge's findings and recommendations to the extent and for the reasons stated in the May 30, 2008 Decision and Certification of Representative as modified below,<sup>3</sup> which is incorporated herein by reference

## CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, AFL-CIO, and that it is the exclusive collectivebargaining representative of the employees in the following appropriate unit:<sup>4</sup>

*Included:* All full-time and regular part-time dealers employed by the Employer at its Mississippi and the Boardwalk, Atlantic City, NJ facility.

*Excluded*: All other employees, cashiers, pit clerks, clerical employees, engineers, guards and supervisors as defined in the Act.

## Notice to Show Cause

As noted above, the Respondent has refused to bargain for the purpose of testing the validity of the certification of representative in the U.S. Courts of Appeals. Although Respondent's legal position may remain unchanged, it is possible that the Respondent has or intends to commence bargaining at this time. It is also possible that other events may have occurred during the pendency of this litigation that the parties may wish to bring to our attention.

Having duly considered the matter,

Voting Subject to Challenge: All full-time and regular part-time dualrate dealers/supervisors may vote subject to challenge by the parties.

<sup>&</sup>lt;sup>1</sup> Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the powers of the National Labor Relations Board in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Thereafter, pursuant to this delegation, the two sitting members issued decisions and orders in unfair labor practice and representation cases.

<sup>&</sup>lt;sup>2</sup> Consistent with the Board's general practice in cases remanded from the courts of appeals, and for reasons of administrative economy, the panel includes the remaining member who participated in the original decision. Furthermore, under the Board's standard procedures applicable to all cases assigned to a panel, the Board Members not assigned to the panel had the opportunity to participate in the adjudication of this case prior to the issuance of this decision.

<sup>&</sup>lt;sup>3</sup> In incorporating the prior decision, we revise fn. 7 to read, "A local television channel broadcast a brief report about the event on that evening's 11 o'clock news, and three newspaper stories mentioned the event (although none described it using the word 'certification'), but the stipulated facts do not state that any dealers saw the broadcast or read the stories or otherwise satisfy the Employer's burden of proof on the issue." See *Trump Plaza Hotel & Casino*, 352 NLRB 628, 628 fn. 7 (2008). We also revise the prior decision's description of the record evidence pertaining to whether any dealers saw the poster, or copies thereof, prior to the election; we note that the stipulated facts do not state that any dealers saw the poster or copies thereof at the Union's office prior to the election and the Employer did not otherwise satisfy its burden of proof on that issue. See id. at 628.

<sup>&</sup>lt;sup>4</sup> The Stipulated Election Agreement further stated:

- 1. The General Counsel is granted leave to amend the complaint on or before October 8, 2010 to conform with the current state of the evidence;
- 2. The Respondent's answer to the amended complaint is due on or before October 22, 2010; and
- 3. NOTICE IS HEREBY GIVEN that cause be shown, in writing, on or before November 12, 2010 (with affidavit of service on the parties to this proceeding), as to why the Board should not grant the General Counsel's motion for summary judgment. Any briefs or statements in support of the motion shall be filed by the same date.

Dated, Washington, D.C. September 29, 2010

Wilma B. Liebman,	Chairman
Craig Becker,	Member
Mark Gaston Pearce,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD